Jensen Sound Laboratories *and* Highway Drivers, Dockmen, Spotters, Rampmen, Meat Packing House and Allied Products Drivers and Helpers, Office Workers and Miscellaneous Employees Local 710, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America. Cases 13-CA-19930 and 13-RC-15440

September 30, 1981

DECISION, ORDER, AND DIRECTION OF SECOND ELECTIONS

BY MEMBERS FANNING, JENKINS, AND ZIMMERMAN

On June 9, 1981, Administrative Law Judge James J. O'Meara, Jr., issued the attached Decision in this proceeding. Thereafter, Respondent filed exceptions and a supporting brief, and the General Counsel and the Charging Party filed exceptions and a brief in response to Respondent's exceptions and in support of the Administrative Law Judge's Decision.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the record and the attached Decision in light of the exceptions and briefs and has decided to affirm the rulings, findings,[1] and conclusions of the Administrative Law Judge and to adopt his recommended Order, as modified herein.[2]

[1] Respondent has excepted to certain credibility findings made by the Administrative Law Judge. It is the Board's established policy not to overrule an administrative law judge's resolutions with respect to credibility unless the clear preponderance of all of the relevant evidence convinces us that the resolutions are incorrect. *Standard Dry Wall Products, Inc.*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing his findings.

Respondent excepted to the Administrative Law Judge's crediting of the testimony of union witness Onefre Arcos concerning a May 9, 1980, conversation between Respondent Personnel Manager Joseph O' Connor and Arcos. Respondent specifically excepted to the Administrative Law Judge's finding that O'Connor's initiation of the conversation with Arcos was motivated in part by a physical attack on O'Connor prior to the meeting. Respondent contends that the attack on O'Connor took place after the May 9 conversation. To bolster this contention, Respondent has filed a "Motion for Leave To Introduce New Evidence by Way of Affidavit and Attached Documents in Support Thereof or, in the Alternative, To Reopen the Record." We deny Respondent's motion as we find it unnecessary to rely on this finding by the Administrative Law Judge. The other findings of the Administrative Law Judge, including O'Connor's awareness of a prior offer of promotion made to Arcos and that O'Connor would have been embarrassed to acknowledge the Arcos meeting since his duties were to advise Respondent regarding proper campaign conduct, are sufficient to support the Administrative Law Judge's crediting the testimony of Arcos over that of O'Connor.

[2] The General Counsel has excepted to the Administrative Law Judge's omission from his recommended Order and notice to employees that Respondent violated Sec. 8(a)(1) of the Act by threatening its employees with loss of employment after reaching this conclusion in his Decision. To correct this inadvertent error, we shall modify the Administrative Law Judge's recommended Order to reflect his conclusion that Respondent violated Sec. 8(a)(1) by threatening its employees with loss of employment.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge, as modified below, and hereby orders that the Respondent, Jensen Sound Laboratories, Schiller Park, Illinois, its officers, agents, successors, and assigns, shall take the action set forth in the said recommended Order, as so modified:

1. Substitute the following for paragraph 1(a):

"(a) Threatening its employees with physical harm and/or loss of employment because they engaged in activities in support of a union."

2. Substitute the attached notice for that of the Administrative Law Judge.

IT IS FURTHER ORDERED that the election held on May 23, 1980, be, and it hereby is, set aside.

[Direction of Second Election and *Excelsior* footnote omitted from publication.]

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

After a hearing at which all sides had an opportunity to present evidence and state their positions, the National Labor Relations Board found that we have violated the National Labor Relations Act, as amended, and has ordered us to post this notice.

The Act gives employees the following rights:

To engage in self-organization

To form, join, or assist any union

To bargain collectively through representatives of their own choice

To engage in activities together for the purpose of collective bargaining or other mutual aid or protection

To refrain from the exercise of any or all such activities.

Accordingly, we give you these assurances:

WE WILL NOT threaten employees with physical harm and/or loss of employment if they engage in activities in support of a union.

WE WILL NOT coercively interrogate employees regarding their union activities or sympathies.

WE WILL NOT offer job promotions to employees in order to induce them not to support a union.

WE WILL NOT selectively enforce any no-posting, or similarly characterized, rule where equal access or treatment is not afforded a union during any organizational campaign period.

WE WILL NOT in any similar or related manner interfere with, restrain, or coerce employees in the exercise of their rights under the National Labor Relations Act.

JENSEN SOUND LABORATORIES

DECISION

STATEMENT OF THE CASE

JAMES J. O'MEARA, JR., Administrative Law Judge: The charge underlying the complaint in this consolidated case was filed on May 16, 1980, by Highway Drivers, Dockmen, Spotters, Rampmen, Meat Packing House and Allied Products Drivers and Helpers, Office Workers and Miscellaneous Employees Local 710, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (hereinafter referred to as Local 710 or the Union). The complaint, issued on June 25, 1980, alleged that Jensen Sound Laboratories, Respondent, violated Section 8(a)(1) of the National Labor Relations Act, as amended, by threatening and interrogating employees regarding union activities, by offering a promotion to a union activist, and by refusing to permit prounion campaign signs to be posted in its plant. Respondent denies that it violated the Act.

The representation case was consolidated with the complaint case by an order dated June 27, 1980. The matter arose pursuant to a petition filed on March 26, 1980, and a Stipulation for Certification Upon Consent Election Agreement approved on April 11, 1980. An election by secret ballot was conducted on May 23, 1980, where, of 60 eligible voters, 59 voted, resulting in 13 votes for and 45 votes against the petitioner with one void ballot.

Timely objections were filed by the Union on May 30, 1980, some of which objections are congruous to the unfair labor acts alleged in the complaint.

The consolidated matters were heard in Chicago, Illinois, on February 4, 1981. At the close of the hearing, oral argument was waived and the parties were given leave to file briefs, which have been received and considered.

In consideration of the entire record in these cases and the briefs and argument of counsel, the following findings are hereby made:

FINDINGS AND CONCLUSIONS

I. JURISDICTION

Respondent Jensen Sound Laboratories is a division of International Jensen, Inc., a Delaware corporation, and maintains an office and place of business in Schiller Park, Illinois, where it has engaged in the warehousing, assembly, and distribution of speakers.[1] During the past year, Respondent sold and distributed products valued in excess of $50,000 which were shipped directly from its Schiller Park, Illinois, facility to points located outside the State of Illinois.

Respondent admits in its pleadings, and I find, that Respondent is, and at all times material herein was, an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

I further find that it will effectuate the policies of the Act to assert jurisdiction in these cases.

II. THE LABOR ORGANIZATION

Respondent admits in its pleadings, and I find, that the Union is, and at all times material herein has been, a labor organization within the meaning of Section 2(5) of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICES

Respondent employs 60 nonsupervisory workers in production, shipping, warehousing, and quality control operations at its Schiller Park, Illinois, facility. On March 18, 1980, the Union notified Respondent that its employees, Onefre Arcos, Carlos Baez, Mayimo Pinada, and Leon Salgado, and "other employees" had launched a campaign to organize for collective-bargaining purposes. On March 25, 1980, Respondent received a second notice naming nine additional employees. In the period extending from the receipt of the first notice directed to Respondent to the election of May 23, the parties conducted a vigorous campaign in support of their respective interests.

A. *The O'Connor-Arcos Meeting*

Joseph O'Connor was Respondent's personnel manager who advised management and supervisory personnel regarding the conduct of Respondent in its opposition to the Union's campaign to organize the employees at the facility. He initially learned of the union petition when he was shown the March 18 notice of intent to organize on or about that date.

On May 9, O'Connor called employee Onefre Arcos to his office to discuss allegations of threats made by Arcos to other employees in the course of Arcos' efforts to persuade employees to vote for the Union. Arcos denied threatening any employees and the matter was not pursued. O'Connor told Arcos that he had a great opportunity to be a supervisor "outside the line."[2] Arcos said that he had no desire to take such a position at that time. O'Connor asked Arcos if he was looking for "something with the Teamsters" and if he was a "leader" among the employees in the union movement. Arcos told

[1] This facility is the only facility of Respondent involved in this proceeding.

[2] Arcos had been offered a "leadman" job by the plant manager and plant supervisor on February 28 and 29, which Arcos rejected since he did not want to take on more responsibility.

O'Connor that not only he but 14 other people were engaged in the union movement.

Arcos was wearing a union button at the time of the meeting. O'Connor told him that the button was "shit" and said, "I'll give you the weekend to take that button off." Arcos refused to remove the button. O'Connor told him that he, O'Connor, "can't take care of the consequences" and added "the trouble is, you are a son-of-a-bitch because you cause many problems. I'm giving you an opportunity and you don't want it."

O'Connor also told Arcos that Respondent was very powerful and he would send someone to Arcos' house to kill him or to give him problems and that if the Union lost the election Arcos and his companions would be fired immediately. The foregoing comprise unlawful threats to and interrogation of employees and violates Section 8(a)(1) of the Act.[3]

Although there is no testimony that O'Connor expressly offered Arcos a promotion, his statement that Arcos had a great opportunitv to be a supervisor is tantamount to an offer or promise requiring only Arcos' pursuit of the suggestion. Such offer or promise violates Section 8(a)(1).[4]

B. *Respondent's No-Posting Rule*

During the period commencing from the receipt by Respondent of the Union's notice of intent to organize and continuing to the date on which the election was held, procompany campaign signs were posted at numerous locations throughout Respondent's facility. These signs were located in the employees cafeteria, in the men's washroom, in the shipping department, about the storage racks, and at productions lines.

Approximately 2 weeks prior to the election employee Joseph Gentile observed three co-employees placing procompany signs at their work stations on the production line.[5] He estimated the number of procompany signs at 10 to 20 about the plant. He saw no prounion signs. A few days later Gentile put up two prounion signs which were ripped down by Ray Kulm, a supervisor, who told Gentile not to put up any more signs. Kulm told Gentile to "see Joe O'Connor about it." Gentile spoke to O'Connor requesting permission to post prounion signs about the plant. After being refused, he asked O'Connor why he could not put up prounion signs since other people were putting up procompany signs. O'Connor's response was, "It's Jensen's property and Jensen says what goes on Jensen's property."

During this period, Arcos also observed numerous procompany campaign signs about the plant. He asked his supervisor, Bob Semerick, for permission to put up a prounion sign. Semerick said he would have to consult with Raymond Burgert, the plant manager, and refused to permit Arcos to place the sign.

At the time in question, Respondent's policy prohibited the posting of signs of any nature about the plant with the exception of signs on the company bulletin board. Respondent admits that Arcos and Gentile requested permission to place prounion signs in and about the plant and were refused. O'Connor also admitted that many signs were located in the plant and acknowledged that the company policy prohibiting the posting of signs was not enforced.[6]

Respondent did not deny the fact that Kulm removed the prounion signs placed by Gentile. O'Connor also acknowledged that there were "hundreds" of such signs about the plant and contended that the signs were "pro and con." He also refused permission to place signs "when asked." No effort to enforce the "no signs" rule was made until a Board agent instructed O'Connor to remove them on the day of the election. It is incongruous that the signs were prounion and procompany in view of the removal of the two signs posted by Gentile and the refusal of O'Connor to permit Gentile or Arcos to place prounion signs. The testimony of these two employees that procompany signs were allowed to be posted is credible and I find that the "no posting rule" of Respondent was discriminately enforced against the Union. Such unilateral enforcement of that rule created an imbalance in the accessibility of the prounion campaign to the electorate and constitutes a violation of Section 8(a)(1) of the Act.[7]

IV. THE OBJECTIONS TO THE ELECTION

The Union has filed nine objections arising from alleged acts of Respondent which it claims interfered with the conduct of a fair election. These objections are as follows:

1. The Employer improperly injected the Board into its election propaganda.

2. The Employer engaged in improper campaigning.

3. The Emplover made material misrepresentations during the campaign.

4. The Employer interrogated its employees concerning their union and/or protected concerted activities.

5. The Employer conducted unlawful interviews of its employees.

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[3] *Pak-Mor Manufacturing Company*, 241 NLRB 801 (1979); *The Estate of Albert Kaskel d/b/a Doral Hotel and Country Club*, 240 NLRB 1112 (1979); *Paramont Mining Corporation*, 239 NLRB 699 (1978).

[4] *Triumph Twist Drill Company*, 237 NLRB 1442 (1978).

These findings are based on the testimony of Arcos. During the first week of May, O'Connor, while driving home from a company dinner, was forced off the road and assaulted by unidentified persons. He was told, "This will teach you to mess with the Union, if you don't knock it off, we'll get your wife and kids." This episode admittedly, and understandably, angered O'Connor and was followed by the May 9 meeting with Arcos which O'Connor initiated.

O'Connor was aware of the prior offer of promotion made to Arcos. He collaborated with Bergert, plant manager, in selecting a qualified employee candidate for the new position. The dialogue, as testified to by Arcos, is compatible with his knowledge that Arcos was offered a promotion in February and had refused it.

O'Connor also would have been embarrassed to acknowledge the content of his meeting with Arcos, since his duties were to advise management regarding proper campaign conduct.

For the above reasons, I credit the testimony of Arcos notwithstanding the denial of O'Connor.

[5] The signs read, "Vote No Union."

[6] O'Connor testified that it would take "100 hours a day" to remove all such signs.

[7] Cf. *Continental Kitchen Corporation*, 246 NLRB 611 (1979); *Green Giant Company*, 223 NLRB 377 (1976) (discriminatory use of company bulletin boards).

6. The Employer offered benefits to its employees in order to dissuade support from Local 710, International Brotherhood of Teamsters.

7. The Employer threatened employees because of their union and/or protected concerted activities.

8. The Employer engaged in surveillance of its employees.

9. By these and other acts not specified above, the Employer, by its supervisors and/or agents, interfered with the holding of a free and fair election on May 23, 1980.

Objections 4, 5, 6, and 7 relate to matters which have been considered and resolved above and, consistent with that resolution, are sustained.

There is no evidence in this record to sustain Objection 8 that Respondent engaged in "surveillance of its employees" and that objection is overruled. Also, Objection 9 is sufficiently lacking in specificity to be considered a proper objection and includes by reference the other objections. It is accordingly overruled.

Respondent, as part of its campaign during the period prior to the election, distributed several memos to "All Hourly Employees" over the signature of O'Connor. These memos were written and distributed in English, Spanish, and Polish.

Such a memo dated May 13, 1980, stated that the Union "will become the sole and exclusive spokesman for all employees on all matters concerning wages, benefits, and other conditions of employment. By law you will no longer have the right to speak for yourself with any member of Management . . . you would have to go through the Union."

This statement is a clear misstatement of employee rights provided in Section 9(a) of the Act and is an unlawful threat of loss of benefits. *Sacramento Clinical Laboratory, Inc.*, 242 NLRB 944 (1979).

As stated by the Board in *Sacramento, supra*, each case must be viewed in the context of its own particular circumstances to determine whether a statement conveys a clear threat of loss of benefit in violation of the Act. The language of the May 13 memo is expressly contradictory to the first proviso of Section 9(a) and constitutes a misrepresentation of an employee's right under the Act.

Through a memo dated May 1, 1980, the employees were told that an attempt to decertify the Union could result in the employee-union member being penalized by the Union by way of a heavy fine. The Board has ruled that a fine imposed upon a union member by the union because that member filed a decertification petition violates Section 8(b)(1)(A) of the Act. *International Molders' and Allied Workers Union, Local No. 125, AFL-CIO (Blackhawk Tanning Co., Inc.)*, 178 NLRB 208 (1969). The clear unmistakable meaning of the language in the May 1 memo is contrary to this ruling and constitutes a false and misleading statement. In view of the foregoing, Objections 2 and 3 must be sustained.

The final objection to be considered is that Respondent improperly injected the Board into its election propaganda. The mere use of Board material in an election campaign is not improper. The impropriety arises when the material gives the impression of Board endorsement or tends to compromise the Board's neutrality. *Hall-Brooke Hospital* v. *N.L.R.B.*, 645 F.2d 158 (2d Cir. 1981), enfg. 244 NLRB 618 (1979). Respondent attached a copy of a Board publication entitled "A Guide to Basic Law Procedures Under the National Labor Relations Act" to two of its memos. The photostated material carried the language "Prepared in the Office of the General Counsel, National Labor Relations Board." No inordinate reference to the attachment was contained in the body of the memo. On one of the attachments, emphasis by underscoring, was indicated but in no way was such emphasis improper. The material was attached to Respondent's memo and thus the distributor's identity was clear. It did not constitute a misrepresentation of fact or law. Such material would not create an impression of Board endorsement of Respondent nor could it be claimed to have compromised the Board's neutrality. Objection 1 is overruled.

In summary, it is recommended that Objections 2, 3, 4, 5, 6, and 7 be sustained and Objections 1, 8, and 9 be overruled.

CONCLUSIONS OF LAW

1. Respondent is an employer engaged in commerce within the meaning of the Act; and the Union is a labor organization within the meaning of the Act.

2. Respondent engaged in unfair labor practices within the meaning of Section 8(a)(1) of the Act by:

(a) Threatening an employee with physical harm and loss of employment for engaging in union activities.

(b) Interrogating an employee about his union activities.

(c) Offering to promote an employee if he would forgo his union organizational activities.

(d) Refusing employees who were union supporters equal access to company premises for the posting of prounion campaign signs while permitting procompany signs to be posted.

3. The aforecited practices are unfair labor practices affecting commerce within the meaning of the Act.

4. The union objections, which have been sustained, establish that Respondent thereby has interfered with the results of the Board election of May 23, 1980.

THE REMEDY

Having found that Respondent engaged in certain unfair labor practices it shall be ordered that it cease and desist therefrom or from engaging in any similar or related conduct and that it take certain affirmative action to effectuate the policies of the Act.

Further, having found that several of the Union's objections to the election of May 23, 1980, should be sustained, it is recommended that said election be set aside and a new election be ordered by the Regional Director to take place as soon as practicable.

Upon the foregoing findings of fact, conclusions of law, and the entire record in this case, and pursuant to Section 10(c) of the Act, I hereby recommend the following:

ORDER[8]

The Respondent, Jensen Sound Laboratories, a Division of International Jensen, Inc., Schiller Park, Illinois, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Threatening its employees with discharge or bodily harm because they engaged in activities in support of a union.

(b) Coercively interrogating employees concerning their union activity or sympathy.

(c) Offering job promotion to employees in order to induce them not to support the Union.

(d) Discriminately enforcing any policy or rule relating to the posting of union campaign literature in its plant.

(e) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed by the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act:

(a) Post at its facility in Schiller Park, Illinois, copies of the attached notice marked "Appendix."[9] Copies of said notice, on forms provided by the Regional Director for Region 13, after being duly signed by Respondent's authorized representative, shall be posted by it immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(b) Notify the Regional Director for Region 13, in writing, within 20 days from the date of this Order, what steps it has taken to comply herewith.

IT IS FURTHER RECOMMENDED that the Board set aside the election of May 23, 1980, and order a new election to be conducted as soon as practicable.

[8] In the event no exceptions are filed as provided by Sec. 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Sec. 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.

[9] In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."